



General Assembly

January Session, 2009

***Raised Bill No. 1004***

LCO No. 3762

\*03762\_\_\_\_\_JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

***AN ACT CONCERNING COOPERATIVE HEALTH CARE  
ARRANGEMENTS AND STANDARDS IN CONTRACTS BETWEEN  
HEALTH INSURERS AND HEALTH CARE PROVIDERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2009*) (a) As used in this  
2 section:

3 (1) "Cooperative arrangement" means an agreement among two or  
4 more health care providers for the purpose of sharing, allocating or  
5 referring patients, personnel, instructional programs, support services  
6 or facilities or medical, diagnostic or laboratory facilities or  
7 procedures, or negotiating fees, prices or rates with managed care  
8 organizations and includes, but is not limited to, a merger, acquisition  
9 or joint venture of two or more health care providers, including, but  
10 not limited to, physician practice groups;

11 (2) "Health care provider" means: (A) A physician licensed under  
12 chapter 370 of the general statutes, (B) a chiropractor licensed under  
13 chapter 372 of the general statutes, (C) a podiatrist licensed under  
14 chapter 375 of the general statutes, (D) a natureopath licensed under

15 chapter 373 of the general statutes, or (E) an optometrist licensed under  
16 chapter 380 of the general statutes;

17 (3) "Certificate of public advantage" means a certificate issued by the  
18 Attorney General, authorizing health care providers that are parties to  
19 a cooperative arrangement to engage in conduct that could tend to  
20 lessen competition in a relevant health care market, upon a showing  
21 that such cooperative arrangement meets the criteria set forth in  
22 subdivision (2) of subsection (c) of this section; and

23 (4) "Managed care organization" has the meaning set forth in section  
24 38a-478 of the general statutes.

25 (b) The Attorney General may issue a certificate of public advantage  
26 in accordance with this section. Any two or more health care providers  
27 may apply to the Attorney General for a certificate of public advantage  
28 to authorize a cooperative arrangement. The application shall include  
29 (1) the name of the applicant or applicants, (2) a description of the  
30 nature and scope of the cooperative arrangement, (3) a description of  
31 any consideration passing to a party under the agreement, (4) evidence  
32 in support of the criteria set forth in subdivision (2) of subsection (c) of  
33 this section, and (5) such other information as the Attorney General  
34 may require. Each application shall be accompanied by a fee of one  
35 hundred dollars. Any information of a proprietary nature submitted in  
36 such application that meets the standards set forth in subdivision (5),  
37 (8) or (10) of subsection (b) of section 1-210 of the general statutes shall  
38 be confidential and exempt from public disclosure.

39 (c) (1) The Attorney General shall review each application submitted  
40 pursuant to subsection (b) of this section and, not later than ninety  
41 days after receipt of such application, issue a written decision  
42 approving or denying the application. The decision shall set forth the  
43 Attorney General's findings with respect to the benefits and  
44 disadvantages described in subdivision (2) of this subsection and a  
45 conclusion as to whether the benefits outweigh the disadvantages to  
46 the residents of this state. The Attorney General may conduct a

47 hearing, after giving notice to all interested parties, to obtain  
48 information necessary in making such decision.

49 (2) In reviewing applications under this section, the Attorney  
50 General shall consider the criteria established in subsection (a) of  
51 section 19a-637 of the general statutes that the Attorney General deems  
52 relevant to the application for a certificate of public advantage and any  
53 benefits of such cooperative arrangement including, but not limited to:  
54 (A) Enhancement of the quality of health services to consumers; (B)  
55 gains in cost efficiency of providing health services; (C) improvement  
56 in utilization of and access to health services and equipment; and (D)  
57 avoidance of duplication of health care resources. The Attorney  
58 General shall not approve an application for a certificate of public  
59 advantage unless the Attorney General finds that the benefits of the  
60 proposed cooperative arrangement outweigh the disadvantages  
61 including, but not limited to: (i) The potential reduction in  
62 competition; (ii) the adverse impact on quality, access or price of health  
63 care services to consumers; and (iii) the availability of arrangements  
64 that achieve the same benefits with less restriction on competition.

65 (3) Conduct by health care providers in furtherance of a cooperative  
66 arrangement that has received a certificate of public advantage shall  
67 not be subject to the provisions of chapter 624 of the general statutes,  
68 except that the Attorney General may utilize the powers set forth in  
69 section 35-42 of the general statutes when the Attorney General has  
70 reason to believe that the approved cooperative arrangement is not  
71 performing or providing services as described in the application or in  
72 the annual progress report. This section shall not be construed to  
73 require a health care provider to obtain a certificate of public  
74 advantage in order to enter into a cooperative arrangement, and,  
75 absent a certificate of public advantage, the legality of such cooperative  
76 arrangement shall be determined by applicable antitrust law.

77 (4) Health care providers in a cooperative arrangement that has  
78 received a certificate of public advantage pursuant to this section shall

79 submit an annual progress report to the Attorney General on a form  
80 prescribed by the Attorney General. The report shall be accompanied  
81 by a fee of one hundred dollars.

82 (5) The Attorney General shall actively supervise any cooperative  
83 arrangement authorized pursuant to this section to determine whether  
84 the conduct undertaken by the health care providers in furtherance of  
85 the cooperative arrangement should continue to be authorized. The  
86 Attorney General shall review such conduct through annual progress  
87 reports submitted by the health care providers in a cooperative  
88 arrangement in accordance with subdivision (4) of this subsection to  
89 evaluate whether the conduct is consistent with the application and  
90 whether the benefits continue to outweigh the disadvantages. If the  
91 Attorney General has reason to believe that the likely benefits no  
92 longer outweigh the disadvantages, the Attorney General shall notify  
93 the holder of the certificate of public advantage and hold a hearing to  
94 determine whether such certificate should be modified or revoked.  
95 Such modification or revocation shall take effect ninety days from the  
96 mailing of notice of a final decision by the Attorney General. The  
97 Attorney General shall not modify or revoke a certificate of public  
98 advantage more than three years after the initial issuance of such  
99 certificate.

100 (d) Any health care provider denied a certificate of public advantage  
101 by the Attorney General pursuant to this section and any holder of a  
102 certificate of public advantage that has been modified or revoked by  
103 the Attorney General pursuant to subdivision (5) of subsection (c) of  
104 this section may appeal therefrom as if such denial, modification or  
105 revocation were a contested case within the meaning of chapter 54 of  
106 the general statutes.

107 (e) No managed care organization shall refuse to negotiate in good  
108 faith with parties to a cooperative arrangement authorized by the  
109 Attorney General. Any managed care organization that violates this  
110 section shall be subject to a civil penalty of not more than twenty-five

111 thousand dollars per day for each violation. The Attorney General may  
112 institute proceedings to enforce the provisions of this section in the  
113 superior court for the judicial district of Hartford.

114 (f) A violation of subsection (e) of this section shall be deemed an  
115 unfair or deceptive trade practice under chapter 735a of the general  
116 statutes.

117 Sec. 2. (NEW) (*Effective October 1, 2009*) (a) As used in this section:  
118 (1) "Contracting health organization" means (A) a managed care  
119 organization, as defined in section 38a-478 of the general statutes, or  
120 (B) a preferred provider network, as defined in section 38a-479aa of the  
121 general statutes; and (2) "physician" means a physician or surgeon,  
122 chiropractor, podiatrist, psychologist, optometrist, natureopath or  
123 advanced practice registered nurse.

124 (b) Each contract for services to be provided to residents of this state  
125 entered into, renewed, amended or modified on or after October 1,  
126 2009, between a contracting health organization and a physician shall  
127 include provisions that: (1) Provide an explanation of the physician  
128 payment methodology, the time periods for physician payments, the  
129 information to be relied on to calculate payments and adjustments and  
130 the process to be relied on to resolve disputes concerning physician  
131 payments; and (2) require that the contracting health organization  
132 provide to each participating physician a complete copy of all current  
133 procedural terminology codes and all current reimbursements for such  
134 codes that determine the physician's reimbursement for the entire  
135 contract period.

136 (c) No contract for services to be provided to residents of this state  
137 entered into, renewed, amended or modified on or after October 1,  
138 2009, between a contracting health organization and a physician shall  
139 include any provision that allows the contracting health organization  
140 or physician to unilaterally change any term or provision of the  
141 agreed-upon contract, including, but not limited to, any term or  
142 provision concerning: (1) Fee schedules or provider panels; (2) the

143 physician's ability to discuss or negotiate the terms of the contract; or  
144 (3) the physician's ability to terminate the contract unless the change is  
145 required by law.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	New section
Sec. 2	<i>October 1, 2009</i>	New section

***Statement of Purpose:***

To: (1) Permit health care providers to enter into cooperative arrangements that would not be subject to certain antitrust laws after approval by the Attorney General, and to require managed care organizations to negotiate in good faith with providers who participate in such arrangements, and (2) establish standards for contracts between health insurers and health care providers.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*